

DIGEST OF 2000 BIR RULINGS

DISPOSITION OF OBSOLETE AND UNUSED BIR FORMS - Granting the request of Pilipinas Shell Petroleum Corporation (PSPC) for the approval to dispose by destruction the unused and obsolete BIR registered forms/documents which are not intended to be used anymore, provided the destruction shall be witnessed by a representative from the Excise Tax Division and two (2) representatives from the Regional Office, one from the Revenue District Office and the other from the Assessment Branch who shall likewise certify and report to the BIR the list / inventory of forms / documents actually destroyed. **(BIR Ruling No. 001-2000 dated January 03, 2000)**

EXCISE TAX; Commingling of tax-paid unleaded gasoline with leaded gasoline - Locally manufactured petroleum products, like leaded and unleaded premium gasoline, are respectively subject to excise tax at P5.35 and P4.35 per liter of volume capacity and shall be paid before removal from the place of production from January 1, 1999 and thereafter as prescribed under Section 130(A)(2) of the Tax Code of 1997. The commingling of tax paid unleaded gasoline with leaded gasoline in some storage tanks in Pandacan and the resulting gasoline to be sold as leaded gasoline, for as long as the lead content is higher than the allowable 0.013 g/l, in compliance with the mandate under E.O. 446, falls within the contemplation of the term "reprocessing" or "manufacturing" as defined in Section 2 of Revenue Regulations No. 8-96, since the same altered the exterior texture or form or inner substance or quality of the manufactured products into leaded gasoline with lead content more than 0.013 gram per liter. Thus, the commingling of tax-paid unleaded gasoline with leaded gasoline and the resulting gasoline sold as leaded gasoline is subject to the excise tax of P5.35 per liter of volume capacity pursuant to Section 148 of the Tax Code of 1997, subject to the procedures to be prescribed by this Bureau in order to monitor the deliveries and removals of the stocks in the designated storage tanks. **(BIR Ruling No. 002-2000 dated January 4, 2000)**

METHODS OF ACCOUNTING - The general rule is that a taxpayer is allowed to report income and expenses in accordance with the method of accounting employed, provided such method conforms with generally accepted accounting principles. However, for income arising from rentals of property, a taxpayer must report as part of the gross income advance rentals received during the taxable year, including rentals actually earned but uncollected as of the end of such period. In the instant case, the accounting method being implemented by KSA in reporting its lease income in its books of accounts in accordance with the rules set forth under the International Accounting Standard (IAS) No. 17 will be higher in the initial months of the lease than the actual income earned during the relevant taxable period had it been determined based on the regular accrual method of accounting. In other words, under the IAS No. 17, the sum of the expected rental for the lease term is computed and divided equally over the total number of months covered by the lease. KSA, as lessor of the condominium project may report as gross income, by using the accrual method of accounting, only those rental income actually earned as well as advance payments which constitute its taxable income in the year when received. This is true even though the lessor is on the accrual or the cash method of accounting (BIR Ruling No. 259-92) (*Hyde Part Realty, Inc. v. Commissioner*, 211 F. 2d 462, Cf. *Evansville Courier vs. Commissioner* 62 F.2d 232). Moreover, KSA cannot be said to have derived taxable income during the rent-free period for the lease of the said property, since no monetary consideration or other material consideration that would flow to, or any amount credited by the lessee for the account of KSA. Thus, KSA cannot be deemed to have realized, whether constructively or otherwise, income for the lease of the above-mentioned property during the rent-free periods granted in the Contract of Lease for the said taxable year. **(BIR Ruling No. 003-2000 dated January 05, 2000)**

INCOME TAX; Fringe benefits received by employees in Special Economic Zones - Fringe benefits received by employees, except rank and file employees, in special economic zones, including Clark Special Economic Zone and Subic Special Economic and Free Trade Zone, are subject to the normal rate of fringe benefit tax, i.e., 34% effective January 1, 1998, 33% effective January 1, 1999 and 32% effective January 1, 2000 or the special rates of 25% imposed on the fringe benefit received by non-resident alien not

engaged in trade or business in the Philippines or 15% imposed on the fringe benefit received by (1) an alien individual employed by regional or area headquarters of a multinational company or by regional operating headquarters of a multinational company; (2) an alien individual employed by an offshore banking unit of a foreign bank established in the Philippines; (3) an alien individual employed by a foreign service contractor or by a foreign service subcontractor engaged in petroleum operations in the Philippines; and (4) any of their Filipino individual employees who are employed and occupying the same position as those occupied or held by the alien employees, pursuant to Sec. 2.33 (A) of Revenue Regulations No. 3-98.

Moreover, the grossed-up monetary value of fringe benefit on which the final withholding tax is paid is now deductible on the part of the employer falling under the expense category, pursuant to Section 34(A)(1)(a)(I), also of the Tax Code of 1997. **(BIR Ruling No. 004-2000 dated January 5, 2000)**

INCOME TAX; Filing and payment of capital gains tax returns - Under Section 3 of Revenue Regulations No. 8-98, the capital gains tax return shall be filed by the seller within thirty (30) days following each sale or disposition of realty classified as capital asset located in the Philippines including pacto de retro sales and other forms of conditional sales by individuals, including estates and trusts and payment made to an Authorized Agent Bank (AAB) located within the Revenue District Office having jurisdiction over the place where the property being transferred is located. On the other hand, under Section 5 of Revenue Regulations No. 8-98, the creditable withholding taxes deducted and withheld by the withholding agent/buyer on the sale, transfer or exchange of real property classified as ordinary asset by individuals or corporations shall be paid by the withholding agent/buyer upon filing of the return with the Authorized Agent Bank (AAB) having jurisdiction over the place where the property being transferred is located within ten (10) days following the end of the month in which the transaction occurred. Provided however, that taxes withheld in December shall be filed on or before January 25 of the following year. Thus, the request for an authority to secure Tax Clearance Certificate (TCL) and Certificate Authorizing Registration (CAR) from the Revenue District Office having jurisdiction over the place where the sales (branch) offices are located is hereby granted provided that the said place is likewise the place where the realty sold is located. Otherwise, the above stated rules stated in Revenue Regulations No. 8-98 shall be followed. **(BIR Ruling No. 005-2000 dated January 5, 2000)**

INCOME TAX; Interest paid or incurred within taxable year - Pursuant to Section 34(B) of the Tax Code of 1997, the amount of interest expense paid or incurred by a taxpayer within a taxable year on indebtedness in connection with his trade, business or exercise of profession shall be allowed as a deduction from his gross income, the said interest expense, however, shall be reduced if the taxpayer has derived certain interest income which had been subjected to final withholding tax. The said reduction shall be equal to the percentages of the interest income earned depending on the year when the interest income was earned. This limitation shall apply regardless of whether or not a tax arbitrage scheme was entered into by the taxpayer or regardless of the date of the interest bearing loan and the date when the investment was made, for as long as, during the taxable year, there is an interest expense incurred on one side and an interest income earned on the other side, which interest income had been subjected to final withholding tax. **(BIR Ruling No. 006-2000 dated January 5, 2000)**

DOCUMENTARY STAMP TAX; Exemption of CSEZ registered enterprise - Since STPI is a CSEZ registered enterprise and is liable only to the preferential tax treatment of 5% on its gross income which shall be in lieu of local and national taxes pursuant to Section 12 (C) of RA No. 7227, STPI is exempt from the payment of the documentary stamp tax on the original issue of stock certificates to its respective stockholders. (BIR Ruling No. 077-98 dated May 28, 1998) On the other hand, Section 173 of the Tax Code of 1997 provides that "whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax." Thus, it is the direct liability of STC-Taiwan, as stockholder of STPI, to pay the documentary stamp tax imposed under Section 175 of the said Code. However, since STC-Taiwan is a non-resident foreign corporation, it is not subject to Philippine income tax as well as to the documentary stamp tax imposed under said Section, since under its inherent limitations taxation may be exercised only within the territorial jurisdiction of the taxing authority. This Office therefore, accepts the voluntary offer to pay the documentary stamp tax on the

original issuance of shares of stock under Section 175 of the Tax Code of 1997, excluding the 25% surcharge and compromise penalty. **(BIR Ruling No. 007-2000 dated January 5, 2000)**

INCOME TAX; Intercorporate Dividends - The purpose of Sec. 28(B)(5)(b) of the Tax Code of 1997 is to subject SGS Philippines, Inc. to the preferential tax rate of 15% withholding tax on the dividends remitted to its foreign parent company, Societe Generale de Surveillance of Switzerland, a non-resident foreign corporation, subject to the condition that Switzerland in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to 18% which represents the difference between the regular income tax (33%) on corporations for the taxable year 1999 and the 15% tax on dividends. Otherwise, to run counter to the very spirit and intent of said law will definitely affect the foreign corporations interest here and discourage them from investing capital in our country.

Being a subsidiary of Societe Generale de Surveillance, SGS Philippines, Inc. is subject to the preferential tax rate of 15% withholding tax on dividends pursuant to Section 28(B)(5)(b) of the Tax Code of 1997. It may file with the Appellate Division, this Bureau, a claim for the refund of the amount of P720,000.00 representing overpaid withholding tax on dividends within a period of two (2) years after the payment of the said tax. **(BIR Ruling No. 008-2000 dated January 5, 2000)**

INCOME TAX; Fringe benefits granted to salesman and marketing executives - As manufacturer and distributor of consumer products all over the Philippines, the Company leases cars and other vehicles for the use of the company's salesman, marketing executives and other officers of the company; that because the cars and other vehicles are being used for business as well as for personal purposes, the company requires the officers and employees to share at least 40% of the monthly rental; that the employees' share on monthly rental is being deducted from their payroll which are subjected to withholding tax on compensation; and that the company booked only its 60% share of the monthly rental as rental expense. For this reason, only 10% of the monthly car rental is taxable as fringe benefit tax in-as-much as the 40% share of the employer on the car rental has already been taxed as compensation. **(BIR Ruling No. 009-2000 dated January 05, 2000)**

ESTATE TAX; Family Home - For purposes of the estate tax, the value of the house and lot shall be included as part of the gross estate. The one-half share of the surviving spouse in the conjugal dwelling is then deducted from the total gross estate to arrive at the total net estate of the decedent. Thereafter, the one-half share of the decedent to the family home (house and lot) is allowed as a deduction from the net estate provided that if the current fair market value of that one-half portion exceeds one million pesos, the excess shall be subject to estate tax. As a sine qua non condition for the exemption or deduction, said family home must have been the decedent's family home as certified by the barangay captain of the locality pursuant to Section 86(A)(4). **(BIR Ruling No. 010-2000 dated January 5, 2000)**

INCOME TAX; Individual receiving a combination of compensation and businesses/professional income - Section 2.79.1(A)(9) of Revenue Regulations No. 2-98 implementing Republic Act No. 8424 provides that an individual receiving a combination of compensation and business/professional income shall first deduct the allowable personal and additional exemptions from compensation income only the excess therefrom can be deducted, from business or professional income. In the case of husband and wife, the husband shall be the proper claimant of the exemptions unless he waives it in favor of his wife. However, the tax rates for computing the taxable compensation and business income shall be that which is in accordance with the schedule as provided for under Section 24(A)(1)(c) of the Tax Code of 1997 except that the latter shall be subject to allowable deductions under Section 34 of the same Code. **(BIR Ruling No. 011-200 dated January 5, 2000)**

AUTHORITY OF THE COMMISSIONER TO PRESCRIBE REAL PROPERTY VALUES - Section 6(E) of the Tax Code of 1997 provides that for purposes of computing any internal revenue tax, the value of the property shall be whichever is the higher of (1) the fair market value as determined by the Commissioner; or (2) the fair market value as shown in the schedule of values of the Provincial and City

Assessors. The zonal value of agricultural lands in Brgy. Ususan, Municipality of Taguig is P2,000.00 per square meter as determined by this Office effective December 12, 1997.

Moreover, in view of the exceptional circumstance which justifies the late payment of the documentary stamp tax imposed under Section 175 of the Tax Code of 1997 within the time specified in Section 200(B) of the same Code, the request for the waiver of the surcharge and penalty is hereby granted but not the payment of interest. **(BIR Ruling No. 012-2000 dated January 7, 2000)**

EXCISE TAX; Exemption of PAL from the payment of taxes on imported aviation gas, etc. not applicable to Cebu Air, Inc. (CAI) - The exemption of PAL from the payment of taxes on imported aviation gas, fuel and oil is specific and expressly granted under Section 13 of its franchise. On the other hand, CAI's tax exemption on similarly imported fuel products is based merely on Section 15 of PAL's franchise. Had Congress intended to exempt CAI's from the payment of taxes, specifically specific tax on its importation of aviation gas, fuel and oil whether refined or its crude form, it would have so stated in the tax provisions of its franchise. The principle is that the grant of any tax exemption must be clear and categorical and must not admit of any doubt.

The blanket provision in CAI's franchise to the effect that it shall ipso facto be entitled to any tax privileges that may be enjoyed by any competing individual, partnership or corporation applies prospectively and does not refer to PAL, the franchise of which antedates that of CAI's PAL was first granted a franchise to establish, operate and maintain air transport services under Act No. 4271 enacted in 1935. Prior to the expiration of Act No. 4271 in November 1985, PD No. 1590 was issued on June 11, 1978 granting PAL a new franchise to continue its air transportation business. On the other hand, R.A. No. 7151, which granted CAI a franchise to establish, operate and maintain transport services by air was passed into law on August 20, 1991.

The wording of Section 11 of the franchise of CAI clearly suggest that it is intended to apply prospectively, or "in the event that" another airline established in the future is granted tax privileges that are more favorable than those given to CAI and which would put the latter at a disadvantage. It clearly does not apply to PAL whose franchise was granted earlier. Thus, BIR Ruling No. 110-99 dated July 20, 1999 is revoked, subject to the non-retroactivity provisions of Section 246 of the Tax Code of 1997. **(BIR Ruling No. 013-2000 dated January 7, 2000)**

BIR Ruling No. 014-2000 dated January 7, 2000 pertains to the request of the National Food Authority (NFA) to grant its employees differential in back wages for a total of 120 months covering the period July 1989 to June 1999. Instead of cash, the payment shall be in rice form, thus, the entitled employee will be issued equivalent bags of rice valued at a price approved for the purpose. The differential, in rice form, would be released in tranches up to the year 2000 in quantities to be decided by management depending on the capabilities of NFA. The BIR did not interpose any objection to the manner by which NFA computed the salary and deductions received by each employee which already shows the tax withheld from them. NFA was likewise authorized to remit to RDO No. 39, South Quezon City, the taxes withheld from the employees corresponding to the years 1989 to 1999 estimated to amount to P95,530,164.29.

Moreover, in lieu of amended ITRs, NFA was allowed to file with the concerned RDO an Alphabetical List of Employees who were given salary differential for 1989 to 1999. However, the request for the waiver of the "10th of the following month" period within which to remit the taxes withheld was denied for lack of legal basis.

EXCISE TAX; Exemption of PAL from the payment of taxes on imported aviation gas, etc. not applicable to Air Philippines - The exemption of PAL from the payment of taxes on imported aviation gas, fuel and oil is specific expressly granted under Section 13 of its franchise. On the other hand, Air Philippines is seeking tax exemption on similarly imported fuel products based merely on Section 15 of Pal's franchise. Had Congress intended to exempt Air Philippines from payment of taxes, specifically specific tax on its importation of aviation gas, fuel and oil whether refined or its crude form, it would have

so stated in the tax provisions of its franchise. The principle is that the grant of any tax exemption must be clear and categorical and must not admit of any doubt.

The wording of Section 15 of the Air Philippines franchise clearly suggest that it is intended to apply prospectively, or "in the event that" another airline established in the future is granted tax privileges that are more favorable than those given to Air Philippines and which would put the latter at a disadvantage. It clearly does not apply to PAL whose franchise was granted earlier. Thus, the request of Air Philippines for exemption from the payment of taxes, including but not limited to specific taxes like excise taxes in the importation of aviation gas, fuel and oil, whether refined or in crude form, is denied for lack of legal basis. **(BIR Ruling No. 015-2000 dated January 07, 2000)**

INCOME TAX; Exemption from withholding tax on bonds with maturity period of more than 5 years - Section 32(B)(7)(g) of the Tax Code of 1997 provides that "*Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years*" are excluded from gross income, hence, exempt from income tax, effective January 1, 1998. Thus, if the maturity period of the bonds issued through the BTr will be more than five (5) years, the gains that may be derived therefrom by the bondholders shall be exempt from income tax. Consequently, such gains are also exempt from the 20% final withholding tax. (Citation omitted) There is no legal basis to exempt bonds of all classes from the payment of the documentary stamp tax notwithstanding the fact that, pursuant to Section 32(B)(7)(g), bonds with a maturity period of more than 5 years are exempt from income tax.

The exemption from income tax and withholding of bonds with maturity period of more than five (5) years is given by law as an incentive to encourage cash savings in such investment securities and to develop both the capital market as well as the secondary market for these investments. Consequently, gains derived from the sale or exchange or retirement of both your regular bonds or Small Denominated Treasury Bonds (SDT-Bonds) with stated maturity of 7, 10 or 20 years are covered by the exemption. Since the law speaks of the exclusion from gross income of all gains derived from long term investments, the exemption applies to interest/coupon or profit from the principal of such long-term regular or SDT bonds complying with the statutory maturity period.

Pursuant to Section 246 of the Tax Code of 1997, the ruling of this office is prospective in application. Thus, the BTr is hereby authorized to stop the withholding of the 20% tax from such long-term bonds effective as of the date of the issuance of this ruling. **(BIR Ruling No. 016-2000 dated January 17, 2000)**

INCOME TAX; Income derived in the Philippines by foreign corporation not engaged in trade or business in the Philippines - A foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to 33% (effective January 1, 1999); 32% (effective January 1, 2000 and thereafter) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums) annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c) and (d) [Section 28(B)(1) of the Tax Code of 1997] Hence, income derived in the Philippines by The Chinese University of Hong Kong, The Chinese University of Hong Kong Staff Superannuation Scheme (1083), The Chinese University of Hong Kong Staff Superannuation Scheme (1995) and The University of Hong Kong shall be subject to income tax under Section 28(B)(1) of the Tax Code of 1997 and consequently, to the final withholding tax imposed under Sec. 57(A) of the same Code, as implemented by Revenue Regulations No. 2-98, as amended. **(BIR Ruling No. 017-2000 dated January 17, 2000)**

INCOME TAX; Exemption of National Power Corporation - The exemption from income tax of the National Power Corporation (NPC) under Section 13 of RA 6395, as amended, has been further amended by RA 8424, effective January 1, 1998. Hence, in general, NPC is now subject to corporate income tax under Section 27 of the National Internal Revenue Code of 1997. However, Section 32(B)(7)(b) of the Tax Code, as amended by RA 8424, further provides that in computing for the taxable income for income tax purposes, income derived from any public utility or from the exercise of any essential governmental

function accruing to the Government of the Philippines or to any political subdivision thereof shall be excluded from Gross Income. The NPC is a wholly-owned and controlled government corporation. As such, it is embraced by the word "government" under Sec. 32(B)(7)(b) of the Tax Code. Thus, the income of the NPC from its operations as a public utility shall be exempt from corporate income tax. **(BIR Ruling No. 018-200 dated January 20, 2000)**

ESTATE TAX; Extension of time to file return - The request on behalf of the heirs of the late Dra. Eden Fernandez Ago, for an extension of thirty (30) days within which to file the estate tax return pursuant to Section 90(C) of the Tax Code of 1997 is extended up to March 13, 2000. However, the estate shall be liable to the corresponding interest that have accrued thereon up to the time of the filing of the return and the payment of the estate tax due on the transmission of the said estate to the heirs pursuant to Section 249 of the Tax Code of 1997. [Citation omitted] **(BIR Ruling No. 019-2000 dated March 11, 2000)**

ESTATE TAX; Extension of time to file return - The request on behalf of the Estate of the late Expedito M. Leviste, for an extension of thirty (30) days within which to file the estate tax return pursuant to Section 90(C) of the Tax Code of 1997 is extended up to March 13, 2000. However, the estate shall be liable to the corresponding interest that have accrued thereon up to the time of the filing of the return and the payment of the estate tax due on the transmission of the said estate to the heirs pursuant to Section 249 of the Tax Code of 1997. [Citation omitted] **(BIR Ruling No. 020-2000 dated March 28, 2000)**

VAT; Exemption of imported defense equipment/system intended for viewing and display - Importation of goods is subject to 10% VAT based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise tax, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody pursuant to Section 107(A) of the Tax Code of 1997. Since the imported defense equipment/systems and other materials are for viewing and display only and the same shall be shipped out of the Philippines after the exhibition is over, the said importation is exempt from VAT. Importation connotes permanency and for gain, either for personal use or for business. In the instant case, the importation is in consonance with the exhibition which is for a limited period of time only. However, the exhibitors are required to put up a bond equivalent to the value of the imported defense equipment/systems and other materials which shall answer for VAT and excise tax in the event the participants fail to ship back the aforementioned defense equipment/systems and other materials after the exhibition. **(BIR Ruling No. 021-2000 dated March 28, 2000)**

VAT; DONOR'S TAX; Exemption of donated Index Everest Braille of the Republic of Sweden to the Philippine Blind Union - Pursuant to Section 109(q) of the Tax Code of 1997, transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590, are exempt from the value-added tax. Republic Act No. 7277, otherwise known as the "Magna Carta for Disabled Persons" is special law which grants tax incentives to foreign donor/s on donation, bequest, subsidy or financial aid made to government agencies engaged in the rehabilitation of disabled persons and organizations of disabled persons. Accordingly, the I package stc. Index Everest Braille Embosser donated by the Index Braille of the Republic of Sweden to the Philippine Blind Union is exempt from the donor's tax imposed under Section 99(A) of the Tax Code of 1997 and from the 10% VAT on importation imposed under Section 107(A) of the same Code, in accordance with Section 42 of R.A. 7277. **(BIR Ruling No. 022-2000 dated April 6, 2000)**

R.A.No. 7277; PROCLAMATION NO. 216; Exemption of Poro Point Special Economic Freeport Zone (PPSEFZ) - Under Section 3 of Proclamation No. 216, the governing body of Poro Point Special Economic Freeport Zone (PPSEFZ) shall be the Bases Conversion Development Authority created pursuant to Section 15 of Republic Act No. 7277, otherwise known as the "Bases Conversion and Development Act of 1992." Furthermore, Section 5 of the same Republic Act provides that PPSEFZ shall have all the applicable incentives in the Subic Special Economic and Freeport Zone under R.A. 7277. Accordingly, the tax incentives provided under Revenue Regulations No. 1-95, as last amended by Revenue Regulations No. 16-99 shall, likewise, apply to PPSEFZ. **(BIR Ruling No. 023-2000 dated May 18, 2000)**

INCOME TAX; Income received by a subcontractor whether domestic or foreign, from service contractor engaged in petroleum operations in the Phils. per PD 1354 - Under Presidential Decree No. 1354, any subcontractor, whether domestic or foreign, entering into a contract with a service contractor engaged in petroleum operations in the Philippines, shall be subject to a final tax of 8% of its gross income derived for such contract, such tax to be in lieu of all taxes, whether national or local. Considering that the services performed by SPEX' subcontractors at whatever tier for the Project are directly related and necessarily incidental to SPEX' Petroleum Operations", these subcontractors are likewise subject to the 8% final tax on gross income, in lieu of all taxes, national and local, as imposed under Presidential Decree No. 1354. However, any income earned by such sub-contractors from all other sources within the Philippines shall be subject to the regular income tax imposed under the Tax Code of 1997.

As regards, the question on who has the obligation to withhold the 8% final tax, Section 57 of the Tax Code provides that the payor should withhold the proper amount of tax on certain payments made. Thus, when SPEX receives an invoice from a subcontractor at whatever tier, and makes payment to such subcontractor based on the amount invoiced, it is SPEX which has control and custody over all payments. Therefore SPEX, and not any of its subcontractors, must withhold the 8% final tax based on the amount invoiced by and actually paid to, a particular subcontractor. **(BIR Ruling No. 024-2000 dated May 24, 2000)**

VAT; Importation of century eggs - Section 109(c) of the Tax Code of 1997 provides that the sale or importation of agricultural and marine foods in their original state shall be exempt from the value-added tax. Agricultural products shall considered in their original state even if they have undergone the simple processes of preparation or preservation for the market such as freezing, drying, salting, boiling, roasting, smoking or stripping. The process of making century eggs is a simple process to prepare or preserve the same for the market. It is similar to the making of "balut, penoy" and salted eggs. (VAT Ruling No. 110-98) Accordingly, the importation of century eggs is exempt from the 10% VAT imposed under Section 107(A) of the Tax Code of 1997. **(BIR Ruling No. 025-2000 dated May 25, 2000)**

INCOME TAX; Prizes and awards granted by association not accredited by POC subject to income tax and consequently to 20% withholding tax - Section 32(B)(7)(d) of the Tax Code of 1997 provides that "All prizes and awards granted to athletes in local and international sports competitions and tournaments whether held in the Philippines or abroad and sanctioned by their respective national sports association" shall not be included in gross income and shall be exempt from income tax. Said section, however, should be read in relation to the provisions of R.A. 7549, dated May 22, 1992, which was integrated in the aforesaid section of the Tax Code. Section 2 of the said Act provides that the national sports association shall refer only to those sports associations duly accredited by the Philippine Olympic Committee (POC). The documents submitted disclosed that the sports association that organized and sanctioned the aforementioned chess event is not duly accredited by the Philippine Olympic Committee. Thus, the exemption granted under the aforequoted section of the Tax Code of 1997 does not apply to International Chess Grandmaster Joly Antonio.

Accordingly, the prize money won by GM Rogelio (Joey) M. Antonio, Jr., is subject to 20% final withholding tax under Section 24(B)(1) of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98. **(BIR Ruling No. 026-2000 dated June 13, 2000)**

INCOME TAX; Documentary stamp tax; VAT - This ruling pertains to the tax consequences of the swap agreement being negotiated by Bases Conversion Development Authority (BCDA) with Fort Bonifacio Medical Center, Inc. (FBMCI) of their respective properties ; hence the answers thereto are grouped into:

a. On the conveyance by FBMCI to BCDA of its property

- a.1. The said property not being used in business or just held as capital asset is correctly treated as capital asset subject to capital gains tax rate

of six percent (6%) based on the gross selling price or the fair market value as determined accordance with Section 6(E) of the Tax Code of 1997, whichever is higher. Moreover, the six percent (6%) capital gains tax is a final tax and the gains presumed to be realized from the exchange thereof is no longer included in the other items of gross income in computing the taxable income which is subject to normal corporate tax rate.

a.2. FBMCI is subject to DST based on the fair market value of the property received or the fair market value of the property exchanged as determined in accordance with Section 6(E) of the Tax Code of 1997, whichever is higher, of the land it proposes to convey or transfer by way of the swap/exchange to BCDA.

a.3. Pursuant to Section 106(A)(1)(a) of the Tax Code of 1997, the sale, barter or exchange of real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business is subject to VAT. Conversely, the sale, barter or exchange of real properties which are NOT held primarily for sale to customers or for lease in the ordinary course of trade or business is NOT subject to VAT. The FBMCI property is not held primarily for sale to customers nor it is being offered for lease in the ordinary course of trade or business. Accordingly, the proposed exchange thereof is not subject to VAT.

b. On the conveyance by BCDA to FBMCI of its property

b.1 Section 8(d) of Republic Act No. 7227, as amended by RA 7917, grants the President the authority to sell in whole or in part, that certain 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction, which are declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties. Furthermore, the proceeds of the sale shall not be diminished and, therefore, exempt from all forms of taxes and fees pursuant to the same provision of the said law.

Accordingly, BCDA is exempt from the creditable withholding tax imposed under Section 57(B) of the Tax Code of 1997 or capital gains tax under Section 27(b)(5) of the Tax Code of 1997, whichever is applicable.

b.2. BCDA is exempt from the payment of the DST imposed under Section 196 of the Tax Code of 1997. Pursuant to Sec. 173 of the same Code, FBMCI shall be the one liable to DST based on the fair market value of FBMCI property or the fair market value of BCDA property as determined in accordance with Section 6(E) of the Tax Code of 1997, whichever is higher, of the land BCDA proposes to convey or transfer by way of the swap/exchange to FBMCI, subject to Memorandum Agreement (MOU) dated December 10, 1998. **(BIR Ruling No. 027-2000 dated June 28, 2000)**

VAT; Dressing of live chicken for a fee - In BIR Ruling No. 151-99, it was ruled that the business of dressing live chicken for a fee falls under the definition of the phrase "sale or exchange of service" as defined in Section 108(A) of the Tax Code of 1997. However, it was ascertained that the business engaged in by 3J Food Corporation is similar in all aspects to the integrated operation of the toll processor of San Miguel Foods, Inc. which is exempt from VAT per said BIR Ruling No. 127-92 and VAT Ruling No. 061-97. There is no cogent reason to depart from the principles enunciated in those rulings which are applicable insofar as the situation of 3J Food Corporation is concerned.

BIR Ruling No. 151-99 is therefore, revoked. **(BIR Ruling No. 028-2000 dated July 28, 2000)**

INCOME TAX; Creditable withholding tax - Under Section 57(B) of the Tax Code of 1997, the items of income payable to natural or juridical persons residing in the Philippines are subject to withholding tax at the rate of not less than one percent (1%) but not more than thirty-two (32) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year. Moreover, Section 2.57(B) of Revenue Regulations No. 2-98 provides that under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The SAP Philippines' payroll tax computation method may be adopted to arrive at the payroll period's tax due provided that the amount to be remitted to the BIR is equal to or higher than the tax due of the payee on his compensation income. **(BIR Ruling No. 029-2000 dated July 31, 2000)**

INCOME TAX; Tax-free merger under certain condition - Pursuant to Section 40(c)(2) of the Tax Code, no gain or loss shall be recognized by Blue Circle Philippines, Inc. (BCPI), Round Royal, Inc. (RRI), SM Investment Corporation (SMIC), Sysmart Corporation and CG&E Holdings on the transfer of their Fortune, Zeus and Iligan shares to Republic, in exchange for new Republic shares, because they together hold more than 51% of the total voting stock of Republic after the transfer. The transfer through the facilities of the PSE by the 6th to the last transferor of their Fortune and Zeus shares to Republic in exchange for new Republic shares will be subject to the ½ of 1% stock transaction tax based on the gross selling price or gross value in money of the shares transferred, while the 6th to the last transferor of the Iligan shares will be subject to capital gains tax (CGT) at the rate of 5%, of the par value of the shares transferred. The new Republic shares to be issued, being original issuances, are subject to the DST imposed under Section 175 of the Tax Code at the rate of P2 on each P200, or fractional part thereof, of the par value of the new Republic shares issued. The net operating losses of each of Republic, Fortune, MPCC and Iligan are preserved after the proposed share swap and may be carried over and claimed as a deduction from their respective gross income, pursuant to Section 34(D)(3) of the Tax Code, because there is no substantial change in the ownership of either Republic or Fortune or MPCC or Iligan." **(BIR Ruling No. 030-2000 dated August 10, 2000)**

CAPITAL GAINS TAX; Exemption of transactions from taxes and fees under RA 6657 (Comprehensive Agrarian Reform Law of 1988) - Pursuant to Section 66 of Republic Act No. 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988", transactions involving transfer of ownership, whether from natural or juridical persons, shall be exempted from taxes and all other fees for the conveyance thereof. Furthermore, all arrearages in real property taxes, without penalty and interest, shall be deductible from the compensation to which the owner may be entitled. Conversely, transactions which are not directly connected with the transfer of ownership under the Comprehensive Agrarian Reform Program (CARP), shall be subject to capital gains tax and all other taxes and fees. Since the tax lien annotated at the back of the Transfer Certificate of Title (TCT) pertains to unpaid taxes which are not directly related to CARP, it should be paid in the manner as provided for under above proviso of Section 66 of R.A. No. 6657. Considering, that compensation for the subject parcel of riceland was already completed and fully paid pursuant to the direct payment scheme of the DAR, the lifting of the tax lien duly annotated in the TCT without prior payment of the tax specified therein is not possible.

Furthermore, waiver of arrearages in real property tax or transfer taxes, e.g., estate or inheritance taxes, tantamount to exemption from payment of tax. Thus, the transfer of ownership from the landowner to the tenant-beneficiary, the late Ernesto A. Alvarez represented by his surviving spouse Lourdes Pioquinto is exempt from capital gains tax and other fees pursuant to Section 66 of R.A. No. 6657. However, lifting the

tax lien annotated at the back of the TCT, is hereby denied for lack of legal basis. Certainly, if the landowner, is no longer interested to settle his tax obligation, then the tenant-vendee, who is interested to have the property titled in his name can pay the tax obligations of the former. Such tax lien, if paid by the tenant-vendee, should be considered as part of the just compensation for the property purchased by him. **(BIR Ruling No. 031-2000 dated August 22, 2000)**

MINERAL TAX; VAT; Marbleized Limestone - Since Teresa Marble Corporation is neither the manufacturer or producer of the raw marbleized limestone nor a lessee, owner or operator of a mining claim, it is exempted from the payment of the 2% excise tax imposed under Section 151(A)(2) of the Tax Code of 1997. However, it must show proof that the excise tax on the raw marbleized limestone has already been paid by the manufacturer or producer of the same; otherwise, being the person having possession of the marbleized products, it shall be liable for the tax due thereon.

Finally, as a VAT-registered taxpayer, the local sales of finished marbleized products is subject to 10% value-added tax while the export sale is subject to 0% VAT, pursuant to Section 106(A) also of the Tax Code of 1997. **(BIR Ruling No. 032-2000 dated September 01, 2000)**

INCOME TAX; Overseas Contract Worker - Section 23(C) of the Tax Code of 1997 provides that an individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income from sources within the Philippines. Corollary thereto, Section 22(E)(3) of the same Code provides that a citizen of the Philippines who works and derives income from abroad and whose employment thereat requires him to be physically present abroad most of the time during the taxable year.

Thus, for purposes of exemption from income tax, a citizen must be deriving foreign-sourced income for being a non-resident citizen or for being an overseas contract worker (CW). All employees whose services are rendered abroad for being seconded or assigned for at least 183 days may fall under the first category and are therefore exempt from payment of Philippine income tax. The phrase "most of the time" shall mean that the said citizen shall have stayed abroad for at least 183 days in a taxable year. (Sec. (2)(c), Revenue Regulations No. 1-79)

The same exemption applies to an overseas contract worker but as such worker, the time spent abroad is not material for tax exemption purposes. All that is required is for the worker's employment contract to pass through and be registered with the Philippine Overseas Employment Agency (POEA). (BIR Ruling No. 033-2000 dated September 05, 2000) 34. **WITHHOLDING TAX; Remittance of creditable withholding tax** - The obligation to deduct and withhold the creditable withholding tax is on the part of the buyer/payor as the constituted withholding agent. There is, however, no prohibition for the buyer/payor to designate an agent to act for and in his behalf in the remittance of the said tax. Accordingly, the designation of Epoch as the agent of its buyers in the remittance of the creditable withholding tax and payment of the documentary stamp tax is valid as long as the remittance and payments were made in the name of its buyers. **(BIR Ruling No. 034-2000 dated September 05, 2000)**

ISSUANCE OF RECEIPTS - An official receipt is a written acknowledgement of payment of money or delivery of chattels. Section 237 of the Tax Code of 1997 provides that all persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. While there is nothing in the Tax Code of 1997 that prohibits a taxpayer from using more than one form of receipt, yet reason dictates that it is difficult to monitor a taxpayer using two or more forms of receipts. Otherwise, it will defeat one of the purposes of an official receipt; that is, to have an orderly record of its transactions. Allowing a taxpayer to use two or more forms of receipts can be a tool for deceit or encourage a taxpayer to commit a wrong. **(BIR Ruling No. 035-2000 dated September 05, 2000)**

CAPITAL GAINS TAX; DST; Tax base to be used in the computation - Since the sale of the realty of the delinquent taxpayer, is the enforcement by the City of Dagupan of its tax lien for unpaid real estate taxes and is being conducted through public bidding or a public auction sale, this Office holds that the tax base in computing the capital gains tax and documentary stamp tax on such sale transaction should, as in the case of mortgage foreclosure sale under Act 3135, as amended, be likewise on the highest bid price. Hence, the capital gains tax and documentary stamp tax due on the said sale of the realty in the public auction sale by the City of Dagupan, Pangasinan, should be computed based on the highest bid price. **(BIR Ruling No. 036-2000 dated September 11, 2000)**

SURCHARGE; Waiver due to justifiable reasons - Section 248(A)(2) provides that there shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in case a return required to be filed under the Tax Code of 1997, is filed with an internal revenue officer other than those with whom the return is required to be filed. However, since the filing of the return and payment of the said taxes (capital gains tax and documentary stamp tax) on the sale of the realty situated in San Juan, Metro Manila, was prompted by and with the guidance of the BIR Office in Mandaluyong City, this Office holds that the above circumstances may be considered as justifiable reasons in waiving the said 25% surcharge imposed under Section 248(A)(2) of the Tax Code of 1997. **(BIR Ruling No. 037-2000 dated September 11, 2000)**

CAPITAL GAINS TAX; Documentary stamp tax; Validity of Agreement whereby buyers assumed payment of taxes - Section 2 of Revenue Regulations No. 13-85 implementing then Section 21(b) (now Section 24(D)(1) of the Tax Code of 1997) provides that the person liable to pay the capital gains tax is the seller or the person who is presumed to have realized an income or gain from the transaction. This Office recognizes the validity of the agreement between the seller and the buyers whereby the latter assumed the payment of all transfer taxes as having the force or law between the parties. However, Section 204(A)(2) of the Tax Code of 1997 is for the benefit of the person liable under the law to pay the tax. Under the law it is the seller who is liable to pay the capital gains tax. It appears that the financial position of the seller does not demonstrate a clear inability to pay the assessed tax. Accordingly, there is no basis for compromise insofar as the seller is concerned. To rule otherwise would provide an opportunity for circumventing the law. Thus, the request for the waiver of the surcharge, interest and compromise penalty due to non-payment of documentary stamp tax and capital gains tax by reason of financial incapacity is denied. **(BIR Ruling No. 038-2000 dated September 11, 2000)**

DENIAL OF REQUEST FOR WAIVER OF SURCHARGES AND PENALTIES - The request for the waiver of the surcharges and penalties imposed due to late payment of fringe benefits tax liability for the first and second quarters of 1998 is denied although the company is in good faith and very much willing to pay the corresponding fringe benefits tax for the said period. Under Sections 248(A)(1) and (3) and 249, both of the Tax Code of 1997, the imposition of the surcharge and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time. [Citation omitted] **(BIR Ruling No. 039-2000 dated September 11, 2000)**

EXCISE TAX; VAT; Exemption of imported denatured alcohol - Section 134 of the Tax Code of 1997 provides that only domestic denatured alcohol which are unfit for human consumption shall be exempt from excise tax. However, considering that there is no provision in Title VI of the said Code which provides for the rate and basis of excise tax on imported denatured alcohol, this Office holds that the same rates and basis of excise taxes applicable to locally manufactured articles, like domestic denatured alcohol pursuant to Section 131(B), shall be applied. Accordingly, the importation of denatured alcohol which are unfit for oral intake shall be exempt from excise tax. The importation and sale however, of the said denatured alcohol are subject to the 10% VAT under Sections 107(A) and 106(A) of the Tax Code of 1997. **(BIR Ruling No. 040-2000 dated September 13, 2000)**

MINIMUM CORPORATE INCOME TAX; Liability of GOCCs from payment - The term "domestic corporations" undoubtedly includes Government-Owned and Controlled Corporations (GOCC) since they are now subject to the corporate income tax like ordinary corporations. It follows, therefore, that the 2% MCIT shall also be imposed on the gross income of GOCC beginning the 4th taxable year in which such GOCC commenced its business operations even though it has a zero or negative taxable income or whenever the amount of the minimum corporation income tax is greater than the normal income tax due from such GOCC. Similarly, a GOCC may request for the suspension of the MCIT by submitting proof that it has sustained substantial losses on account of a prolonged labor dispute or because of "force majeure" or because of legitimate business reverses. **(BIR Ruling No. 041-2000 dated September 15, 2000)**

FINAL WITHHOLDING TAX; Exemption of interest in one derived by PERAA Retirement Plan from depository bank - Section 24(B)(1) of the Tax Code of 1997 provides that interest income received by an individual taxpayer (except a non-resident individual) from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7.5%) of such interest income.

On the other hand, Section 60(B) of the Tax Code of 1997 specifically exempted employees' trust from income tax. Since the final tax and the withholding thereof are embraced within the title on "Income Tax," it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless. Hence, the interest income derived by PERAA Retirement Plan from its depository bank under the expanded foreign currency deposit system is exempt from the 7.5% final withholding tax imposed under Section 24(B)(1) of the Tax Code of 1997, as implemented by Revenue Regulations No. 10-98 **(BIR Ruling No. 042-2000 dated September 15, 2000)**

EXCISE TAX; Green Cross Baby Cologne classified as Toilet Waters - The term "cologne" (toilet water) which is an alcohol-based preparation is defined as scented alcohol-based liquid used as perfume, after-shave lotion, or deodorant." (Hawley's Condensed Chemical Dictionary, 11th Ed.) Alcohol based is that which contains ethyl alcohol or distilled spirits as chief ingredient. Green Cross Baby Cologne is classified as toilet waters covered by Section 150(b) of the Tax Code of 1997. All other colognes are, likewise, classified as toilet waters subject to excise tax under the same section, including Johnson's Baby Cologne pursuant to Section 150(b) of the Tax Code of 1997. BIR Ruling No. 59-81 dated March 30, 1981 and BIR Ruling No. 535-88 dated November 19, 1988, are declared null and void. **(BIR Ruling No. 043-2000 dated September 15, 2000)**

VAT; Lending investor not considered as non-bank financial intermediary - Section 4.102-1(e) of Revenue Regulations No. 7-95, as amended provides that dealers in securities and lending investors shall be subject to VAT on the basis of the gross income they derive, respectively, from their sale or exchange of securities or their lending activities. "Lending investor" include all persons, other than banks, non-bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions, who make a practice of lending money for themselves or other at interest." By analogy, it can be concluded that a lending investor is not the same nor can it be considered as a non-bank financial intermediary. Accordingly, the imposition of VAT with respect to lending investors is not among those subject to deferment as provided for under Republic Act (R.A.) No. 7716 as amended by R.A. No. 8424, and as last amended by R.A. No. 8761. **(BIR Ruling No. 044-2000 dated September 15, 2000)**

INCOME TAX; Monetization of leave credits to a maximum of 30 days and even up to 50 days not allowed for tax exemption purposes - The ten-day allowable monetization of leave credits for tax exemption purposes have been crafted into Revenue Regulations No. 3-98 in relation to pertinent Joint CSC-DBM Circulars governing the subject of leave credits, namely, Joint CSC-DBM Circulars No. 1, s. 1991. The said Circular defines monetization of leave credits as payment of the money value of the accumulated vacation leave credits without actually going on leave of absence. [Rule III, Section 1 (a)] Thus, officers and employees in the career and non-career service, whether permanent, provisional, temporary or casual, who have accumulated at least fifteen (15) days vacation leave/service credits shall be allowed to monetize a maximum of ten (10) working days vacation leave/service credits a year.

The scheme for the monetization of leave credits is in the nature of a facility or privilege of relatively small value which are offered or furnished by the employer-merely as a means of promoting the health, goodwill contentment, or efficiency of its employees. Further extending the exemption to a "maximum number of 30 days and even up to 50% of all earned leave credits" would materially depart from the "de minimis" concept and hence the exemption requested would be beyond the authority of the BIR to recognize. **(BIR Ruling No. 045 dated September 26, 2000)**

INCOME TAX; Exemption of U.P. as a non-stock, non-profit educational institution - Section 30 (1) of the 1997 Tax Code listed government educational institution as one of the organizations exempt from income tax. Section 30 of the Tax Code pertains to various non-stock, non-profit organizations whose income/revenues received as such are exempt from tax imposed under Title II of the same Tax Code. Paragraph 3, Section 4 Article XIV of the 1987 Philippine Constitution categorically exempts from taxes and duties all revenues and assets of non-stock, non-profit educational institutions., which are actually, directly and exclusively used for educational purposes. The exemption is limited to a non-stock, non-profit educational institution only.

As a non-stock, non-profit government educational institution, U.P. falls squarely within the purview of the above constitutional provision; hence, it is eligible to avail of the tax exemption granted thereat with respect to its revenues derived in pursuance of its educational purpose and when such revenues are actually, directly and exclusively used therefor. Conversely, the revenue or income from trade, business or other activity, the conduct of which is not related to the exercise or performance by such educational institutions of their educational purposes or functions shall be subject to internal revenue taxes when the same is not actually, directly or exclusively used for the intended purpose/s. Department Order No. 149-95 dated November 24, 1995 amending Finance Department Order No. 137-87 provides that interest income from Philippine currency bank deposits and yield from deposit substitute instruments used actually, directly and exclusively in pursuance of the educational purpose for which an educational institution was created, are exempt from the 20% final withholding tax imposed Section 27(D)(1) of the Tax Code of 1997, subject to compliance with the conditions that as a tax-exempt educational institution, the University shall, on an annual basis, submit to the Revenue District Office concerned an annual information return and duly audited financial statement.

Likewise, pursuant to Section 32(B)(7)(g) of the 1997 Tax Code, gains realized by U.P. from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with maturity of more than five (5) years, shall also be exempt from income tax. **(BIR Ruling No. 046-2000 dated September 26, 2000)**

WAIVER OF SURCHARGE - The request for a reconsideration of the position of the Davao BIR Office imposing surcharges for paying taxes in the wrong venue is granted in view of the justifiable circumstance surrounding the case. The basis is Section 204(B)(1) of the Tax Code of 1997 which grants the Commissioner the authority to abate or cancel any portion of the tax liability when the same appears to be unjustly assessed. **(BIR Ruling No. 047-2000 dated September 26, 2000)**

VAT; Exemption of Air Philippines Corporation on importation of petroleum products - Pursuant to the provisions of Sec. 15 of Air Philippines Corporation (franchise) in relation to Section 13 of P.D. No. 1590 (Franchise of PAL) and the letter-decision dated June 28, 2000 of the Secretary of Finance, APC shall be exempt from all taxes imposed by the Tax Code on its importations and purchases from abroad of petroleum products which are exempt from value-added tax under Section 109(c) of the Tax Code of 1997, which importations shall be used for its domestic operations. **(BIR Ruling No. 048-2000 dated October 23, 2000)**

DOCUMENTARY STAMP TAX; Deferment of payment - Inasmuch as the borrower-Republic of the Philippines, through its representative, concurs with the provision of the Loan Agreement, it is tantamount to accepting the burden of paying the taxes supposed to be imposed on the income earner which automatically accrues against the borrower.

As regards the request for deferment of documentary stamp tax payment until December, 2000, the same is hereby granted but subject to the imposition of the civil penalties of 25% surcharge and interest of 20% from due date of the tax to actual date of payment pursuant to Sec. 248 and Sec. 249 of the Tax Code of 1997, respectively. **(BIR Ruling No. 049-2000 dated October 23, 2000)**

INCOME TAX; Deadline for filing self-employed - The fixing of the deadline in filing the first quarter income return for each year by self-employed individuals and professionals to April 15 of each year is provided for in Section 67 of the National Internal Revenue Code of 1997. Therefore, the re-statement of the said dates for the filing of the quarterly income tax returns by an individual in R.A. No. 8424, otherwise known as the "Tax Reform Act of 1997" should be viewed as the latest expression of the will of Congress.

However, for self-employed individuals and professionals who failed to submit their first quarter return for 1998 on April 15, 1998 but nonetheless filed their return on or before May 15, 1998, this office promulgated Revenue Memorandum Circular No. 17-98 waiving the imposition of surcharge, interest or other penalties for those who failed to file the adverted return on or before the said date (May 15, 1998). **(BIR Ruling No. 050-2000 dated October 30, 2000)**

INCOME TAX; Exemption of retirement benefits under RA 4917 - Section 36 of the Income Tax Regulations provides that income in the broad sense, means all wealth which flows into the taxpayer other than a mere return of capital. Any and all amounts which represent a return of the personal contributions of the employees to the Fund, who are still in the active service of the Society of Divine World (SVD) shall not be subject to income tax, since the same are considered as mere return of capital.

However, the income of earnings derived from the personal contributions by the employee-members' are subject to income tax since in a retirement plan under R.A. No. 4917, the employer, or officials and employees or both, contribute to a trust fund for the purpose of distributing to such officials and employees or their beneficiaries, the corpus and income accumulated by the trust in accordance with the plan. Section 2(d) of Revenue Regulations No. 1-68, as amended, provides for exemption from income tax only the benefits received by officials or employees upon retirement, in accordance with the BIR-approved Retirement Plan rules or written program. Consequently, any and all amounts actually distributed to said member-employees over and above their personal contributions shall be taxable to them in the year in which so paid or distributed, considering that such distribution has been effected before their retirement from SVD. This means that, **only upon retirement**, the total benefits which the employees shall receive consisting of their personal contributions, counterpart contribution for the employer and the income of the Fund to which the employees are entitled and are distributed to them shall be exempt from income tax. **(BIR Ruling No. 051-2000 dated October 30, 2000)**

INCOME TAX; Retirement benefits - The purpose of Sec. 32(B)(6)(I) of the Tax Code of 1997 is to exclude the retirement benefits from income tax. The sole object of the two (2) conditions enumerated is in turn to provide merely for the minimum requirement in order that the retirement benefits to be given to the official or employee may be exempt from income tax and consequently from withholding tax. However, the Retirement Plan Rules and Regulations of the company may provide that the normal retirement date or early/optional retirement date be more than what is required by the Tax Code. Consequently, in case of conflict between the Tax Code and the Retirement Plan Rules and Regulations, it is the latter that should prevail.

Such being the case, while Sec. 3 of the Retirement Plan Rules and Regulations provides that upon the attainment of at least age 55 or upon completion of twenty-five (25) years of service the employee may be retired at the option of the company, the employee availing of the early/optional retirement must have rendered ten (10) years of service to the company or must be at least age fifty (50) years of age at the time of retirement, otherwise the retirement benefits to be paid to him shall be subject to income tax and consequently to withholding tax. In this particular case, although he is 51 years of age and has rendered 23 years of continuous service to the company the retired employee is still not covered under the early/optional retirement for failure to comply with the conditions as provided in Section 3 of the said Plan i.e., attainment of at least age 55 or completion of twenty-five (25) years of service. In fine, the retirement

benefits to be paid to the said retired employee shall be subject to income tax and consequently to withholding tax prescribed under Section 57(B) of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98. **(BIR Ruling No. 052-2000 dated October 30, 2000)**

VAT; Exemption of regional or area headquarters of multi-national companies - Services rendered by regional or area headquarters established in the Philippines by multinational companies which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific region and do not earn or derive income from the Philippines is exempted from the value-added tax pursuant to Section 109(p) of the Tax Code of 1997 and also under Article 65 of R.A. No. 8756, which amended certain provisions of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1997. Being a Regional Headquarters in the Philippines, Primesoft Marketing Limited shall be exempt from VAT provided that it merely acts as a supervisory, communications and coordinating center for its affiliates, subsidiaries or branches in the Asia-Pacific Region and provided further that it does not earn or derive income from the Philippines. **(BIR Ruling No. 053-2000 dated October 30, 2000)**

VAT; Importation by non-stock, non-profit donee institution - Importation by Asosasyon ng Musikong Pilipino Foundation, Inc. (AMP), a non-stock, non-profit donee institution, of various musical instruments is subject to 10% VAT based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise tax, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody pursuant to Section 107(A) of the Tax Code of 1997)

On the other hand, educational materials such as books shall be exempt from VAT pursuant to Section 109(y) of the Tax Code of 1997. These do not include, however, VHS tapes and other educational materials other than books. **(BIR Ruling No. 054-2000 dated October 30, 2000)**

SURCHARGE - Under Sections 248 and 249, both of the Tax Code of 1997, the imposition of the surcharge and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligation for the state on time. (Jamora vs. Meer, 74 Phil. 22) Considering the justifiable circumstance surrounding the case, this Office hereby grants the request of Coats Thread Philippines for the waiver of payment of surcharge and penalties but not the payment of interest imposed under Section 2498 of the Tax Code of 1997. **(BIR Ruling No. 055-2000 dated October 30, 2000)**

BOOKKEEPING REGULATIONS - The sole proprietors and non-VAT taxpayers shall use denying the request of Mr. Norberto Go-Soco for the imprimatur and accreditation of this Office the accounting and bookkeeping method books which the authored. There is no provision in Revenue Regulations No. V-1, otherwise known as the Bookkeeping Regulations nor in any other tax laws directing this Office to accredit books of account and bookkeeping methods that shall be used by a class of taxpayer. **(BIR Ruling No. 056-2000 dated October 30, 2000)**

FINAL TAX; ROYALTIES - As expressly denoted in the caption of Sec. 27(D)(1) of the Tax Code of 1997, to be subject to 20% final withholding tax, the royalties must be in the nature of passive income. Since the income derived by MKI-Phils. from the distribution of the Licensed Computer Systems to Philippine banks and the performance of support services is income generated in the active pursuit and performance of its primary purpose, this Office is of the opinion that the same is clearly NOT passive income subject to the 20% final tax. Such being the case, the payments received by MKI-Hills from the active conduct of trade or business is considered ordinary business income subject to the 33% (for 1999) regular corporate income tax. **(BIR Ruling No. 057-2000 dated November 07, 2000)**

VAT; Lease of residential units not exceeding P8,000.00 - Section 4.103-1(B)(s) of Revenue Regulations 7-95 which was implemented beginning January 1, 1996 provides that "lease of residential units, boarding houses, dormitories, rooms and bed spaces offered for rent by their owners at a monthly rental of not more than amount under the Rent Control Law (now equivalent to P2,750.00 per month, subject to the annual adjustment provided under the Rent Control Law), shall not be subject to VAT." Upon the effectivity of RA No. 8241 which amended RA No. 7716, Revenue Regulations No. 6-97 was promulgated amending Revenue Regulations No. 7-95 which became effective starting January 1, 1997.

Under Section 109(x) of the Tax Code of 1997 which became effective on January 1, 1998, it is provided that "lease of a residential unit with a monthly rental not exceeding Eight Thousand Pesos (P8,000): x x x" shall be exempt from VAT. Accordingly, Fernandez Hermanos, Inc. has no legal basis to charge the 10% VAT on rental payment for the lease of one (1) unit residential apartment. **(BIR Ruling No. 058-2000 dated November 08, 2000)**

INCOME TAX; GSIS; SSS; Medicare & Pag-ibig contributions - Under Section 2.78.1 (B)(11) of Revenue Regulations No. 2-98 implementing Republic Act No. 8424 relative to the withholding to income tax on compensation, GSIS, SSS, Medicare and Pag-ibig contributions, and union dues of individual employees are exempted from the requirement of withholding tax on compensation, hence, the basic salary to be subjected to withholding tax on compensation should be net of the said deductions (GSIS life and retirement premium, Medicare premium and Pag-ibig premium/contributions). **(BIR Ruling No. 059-2000 dated November 08, 2000)**

VAT; Registration of local government units - There is no automatic exemption from value-added tax registration requirements of local government units. For as long as a government entity sells, barter, exchanges, leases goods, properties or renders services in the course of trade or business, it is required to register as a VAT taxpayer. Accordingly, if the local government of San Pedro, Laguna falls within the provision of Sec. 105 of the Tax Code of 1997 (i.e. in the performance of its proprietary functions), it is required to register as a VAT taxpayer otherwise, it is not. **(BIR Ruling No. 060-2000 dated November 08, 2000)**

VAT; Input taxes to be supported by invoice or receipt - Under Sec. 110 of the Tax Code of 1997 and Sec. 4.104-5 of RR No. 7-95, before a VAT registered person can claim input taxes, the input tax should be supported by an invoice or receipt showing the information as required under Sections 113(A) and 237 of the Tax Code of 1997. Accordingly, Asia Pacific Primestar, Inc. ("APPI") cannot claim an input VAT credit for the value added tax paid on its transaction with AGL since the VAT paid by APPI is not supported by a duly registered official receipt. The recourse of APPI is to file a complaint with the Special Investigation Division (SID) of the Revenue Region concerned. THE SID shall then conduct the proper investigation to determine the liability of AGL for violation of Sections 113(A) and 237 of the Tax Code of 1997. **(BIR Ruling No. 061-2000 dated November 08, 2000)**

Under R.A. No. 6975 otherwise known as "the DILG Act of 1990", DILG has the exclusive jurisdiction over the Bureau of Jail Management and Penology (BJMP) and the PNP. Whatever benefits being enjoyed by the PNP uniformed personnel under Chapter VII of R.A. No. 6975 shall likewise be granted to the uniformed personnel of BJMP. Furthermore, Section 71 of the said law provides that uniformed personnel of the DILG shall be entitled to all the benefits granted under the said section and all other allowances as provided by existing laws. Moreover, Section 77 thereof provides that all benefits granted under the said Act shall be exempt from any tax of whatever nature.

Finally, Republic Act No. 6975, more particularly Sections 71 and 77 thereof, exempting from income tax certain benefits accorded to the uniformed personnel as defined in the Act remains enforced despite the passage of R.A. No. 8424 because of the cardinal rule in statutory construction that a special statute applicable to a particular case is not repealed by a later statute which is general in its terms, provision or application even if the terms of the general act are broad enough to include the cases in the special law unless there is a manifest intent to repeal or alter the special law. Accordingly, certain benefits enjoyed by the uniformed members of the PNP and the BJMP, such as quarters allowance, clothing allowance, cost of

living allowance, hazard pay and longevity pay are exempt from income tax pursuant to Sections 71 and 77 of R.A. No. 6975. **(BIR Ruling No. 062-2000 dated November 20, 2000)**

The Common Trust Fund (CTF) established by the Rizal Commercial Banking Corporation (RCBC) conforms with the features of CTFs which may qualify for exemption from the 20% final withholding tax under Sections 24(B)(1) and 25(A)(2) of the Tax Code. Hence, the interest income derived by individual citizens, individual resident aliens and non-resident alien individuals engaged in trade or business within the Philippines from the 5-year Long-Term Common Trust Fund established by RCBC through its Trust and Investment Division shall be exempt from the final withholding tax of 20% imposed under Sections 24(B)(1) and 25(A)(2), both of the Tax Code of 1997. Consequently, the interest income derived by the RCBC Common Trust Fund is also exempt from such final withholding tax provided that the fund was held by the trustee-bank for at least five (5) years. However, if the participation is for a period of less than 5 years, the interest income shall be subject to a final withholding tax which shall be deducted and withheld from the proceeds of said investment and which shall be computed in accordance with the pre-termination rate schedule under Secs. 24(B)(1) and 25(A)(2) of the Code. **(BIR Ruling No. 063-2000 dated November 20, 2000)**

INCOME TAX; Granting ITH by BOI - The BIR, in the discharge of its functions, has the following powers and duties: (1) assessment and collection of all national internal revenue taxes, fees, and charges; (2) enforcement of all forfeitures, penalties, and fines connected therewith, as well as court judgments; and (3) giving effect to and administering the supervisory and police conferred to the Bureau. [Section 2 of the Tax Code of 1997 (then Sec. 3 of the Tax Code, as amended)]

Furthermore, in pursuance of said investment policy, EO No. 226 further provides that fiscal incentives systems shall be devised to compensate for market imperfections, reward performance contributing to economic development, be cost efficient, and be simple to administer. EO No. 226, was specifically enacted for the purpose and further creating the body which will implement the same. Thus, BOI as the specialized government agency empowered to implement EO No. 226 has, in furtherance of said economic policy, evolved and continues to do a fiscal incentives scheme for specific activities listed in the IPP (Art 2(3), Art 3, EO 226 supra).

The application and subsequent registration by these industrial estates in the preferred area of investments is within the framework of the BOI Investments Priorities Plan sanctioned by EO 226, as amended by RA 7918.

In this light, granting without conceding that the grant of ITH by the Board of these industrial estate enterprises is doubtful, this Office is of the opinion as it hereby holds that BIR cannot declare the same as void and illegal. The BIR is not authorized to reverse or invalidate the action of a co-equal body. **(BIR Ruling No. 064-2000 dated November 27, 2000)**

WITHHOLDING TAX - Taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers pursuant to Section 58 of the Tax Code of 1997 and paragraph 2 of Section 2.58.1 of Revenue Regulations No. 2-98 implementing Section 58 of the Tax Code of 1997.

Finally, under Section 248(a)(1) and (3) and 249, both of the Tax Code of 1997, the imposition of the surcharge and interest on delinquency is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasion or neglect of duty in respect thereof. The request for waiver of penalties for late remittance of the April 1997 withholding tax is denied for lack of legal basis. **(BIR Ruling No. 065-2000 dated November 27, 2000)**

SENIOR CITIZEN - As a qualified senior citizen, subject-taxpayer is exempt from the payment of income tax provided his annual taxable income does not exceed the poverty level of P60,000.00 or such

amount as may be determined by the National Economic Development Authority (NEDA) for a certain taxable year. However, the interest income from his time and/or savings deposit with the Metro Bank (Olongapo Branch) is subject to 20% final withholding tax imposed under Section 24(B)(1) of the Tax Code of 1997. This is explicitly provided for under Section 6(c) of Revenue Regulations No. 2-94 implementing Sections 4 and 5 (a) of Republic Act No. 7432, otherwise known as the "Senior Citizen Act".

The contention that the withholding of 20% final tax on the interest income from time deposit may result to double taxation has no merit. The withholding tax on salary is a method of collecting the income tax at source and applies to all employed individuals, whether citizens or aliens, deriving income from compensation of services rendered in the Philippines. On the other hand, the 20% final tax is limited to a particular income, e.g., interest income from bank deposit. Hence, there is no double taxation because the subjects of taxation are different from each other. Double taxation means taxing the same person twice by the same jurisdiction over the same thing (*Victorias Milling Co. vs. Municipality of Victorias*, L-21183, Sept. 27, 1965). Besides there is no prohibition against double taxation in this jurisdiction (*Commissioner vs. Hawaii Phil. Co.*, L-16315 May 30, 1964; *Pepsi Cola Bottling Co. vs. City of Butuan*, L-22814, Aug. 28, 1968). **(BIR Ruling No. 066-2000 dated November 27, 2000)**

INCOME TAX; Separation pay due to illness - Pursuant to Section 32(B)(6)(b) of the Tax Code of 1997, any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall not be included in the gross income and shall be exempt from taxation under Title II of the Tax Code. In order to avail of the above tax exemption, the "serious illness" must be one which affects the employee's performance of his duties and endangers his life if he continues working as provided under Revenue Memorandum Order (RMO) No. 25-91.

Such being the case, the request for tax exemption of Mr. Ibanez' separation pay is denied for lack of legal basis as his illness is not sufficient to warrant exemption from income tax and consequently from withholding tax, pursuant to Section 32(B)(6)(b) of the Tax Code of 1997 as implemented by RMO No. 25-91. **(BIR Ruling No. 067-2000 dated November 07, 2000)**

CAPITAL GAINS TAX; Reconveyance of property - From the provisions of Section 24(D)(1) of the Tax Code of 1997, it seems that the sale of subject property in favor of Citizen Development, Inc. (CDI) by Ms. Isabelita U. Macatuno is subject thereto. However, a closer perusal of the said transaction would reveal that the property subject of the same is the same property previously transferred in her favor under the UHLP Pag-ibig Program which, as represented, one of the requirements of which is that the Title to the property being sold should first be transferred in the name of the buyer. Considering, however, that after Title to the property in question has been transferred in the name of Ms. Isabelita U. Macatuno, she decided to cancel/withdraw her application with Pag-ibig, hence the instant Deed of Reconveyance.

Such being the case, the reconveyance of the said property by Ms. Isabelita U. Macatuno is except from the payment of capital gains tax imposed under Section 24(D)(1) of the Tax Code of 1997 and documentary stamp tax prescribed under Section 196 of the same Code. However, the same is subject to the documentary stamp tax of P15.00 as imposed by Section 188 of the Tax Code of 1997 on acknowledgments. (BIR Ruling No. 042-97 dated April 8, 1997) The initial payments, however, made by Ms. Isabelita U. Macatuno which were paid but were not returned to her anymore is subject to income tax and should have been reported in the income tax return in the year received by CDI. **(BIR Ruling No. 068-2000 dated December 14, 2000)**

INCOME TAX; Tax exemption of inventors - Pursuant to Sections 5 and 6 of Republic Act No. 7459, otherwise known as "The Inventors and Inventions Incentives Act of 1991) the availment of tax exemption privileges on the income derived from the technologies or inventions shall start from the date of the first commercial sale until the tenth year thereof. Thus, the law specifically limits the period of availment of the tax incentives to the ten (10)-year period only. Likewise, the said period is deemed to have started when such invention products are sold on a commercial scale. Moreover, pursuant to Section 2 (e) of Revenue

Regulations No. 19-93, the invention product or technology is deemed to have been sold on a "commercial scale" when the sale thereof exceeds P200,000 during the any twelve (12) month period.

Accordingly, this Office holds that the consideration (or prizes) received, although a result of the top three (3) inventor's productive activity, is not income duly attributable to the sale on a commercial scale of the invention or technology. Thus, the prizes to be awarded to the individual inventor/s shall be subject to the final tax of 20% imposed under Section 24(B) of the Tax Code of 1997. **(BIR Ruling No. 069-2000 dated December 14, 2000)**

VAT; International Agreements to which the Phils. is a signatory - Pursuant to Section 109(q) of the 1997 Tax Code, transactions which are exempt under international agreements to which the Philippines is a signatory shall be exempt from VAT. The General Agreement on Development Cooperation between the Governments of Australia and the Philippines (GADC-AUS-RP) signed on October 28, 1994, is an international agreement duly ratified by the Philippine Senate pursuant to a Resolution adopted on January 22, 1996. Pursuant to the GADC-AUS-RP, in respect of project supplies and professional and technical material and services, whether to be imported from outside or procured within the Philippines, the Government of the Republic of the Philippines shall subject them to zero rate for purposes of Value-Added Tax (VAT). Likewise, the Philippine Government shall exempt PALS' direct importation of goods from VAT and other taxes imposed in the Philippines.

Considering that all program supplies procured and motor vehicles acquired using the Fund (AusAid) shall be registered under the names of the Australian Embassy and the PALS, and which likewise shall be under the administrative control of the Australian Team Leader as provided for under the GADC, the same shall be exempt from Philippine taxes. Accordingly, the sale of program supplies, equipments and vehicles to the Executing Authority for the implementation of the PALS shall effectively be subject to a zero percent (0%) VAT. However, the supplier of goods and services to AusAid should apply for effective zero-rating, otherwise the sale of vehicle, equipment and supplies shall only be considered exempt from VAT. **(BIR Ruling No. 070-2000 dated December 14, 2000)**

INFORMER'S REWARD; Entitlement - Pursuant to said Section 282 of the Tax Code of 1997, an amount equivalent to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million pesos (P1,000,000) per case, whichever is lower, shall be rewarded to any person for having voluntarily given definite and sworn information, not yet in possession of the BIR, leading to the discovery of frauds upon internal revenue law or violations of any of the provisions thereof. For an informer to claim a reward, he should have been able to furnish this Office a definite and sworn information of any fraud or violation committed under the provisions of the Tax Code. Since a BIR ruling can never be a basis of granting an informer's reward, the collection of professional fee of 10% (reward) of the supposed fine for the alleged violations of the withholding tax regulations, is denied for lack of legal basis. Furthermore, payment and collection of professional fee (or reward) presupposes that the informer was able to furnish a definite and sworn information, not yet in possession of the BIR, leading to the discovery of frauds upon internal revenue law or violation of any of the provisions thereof. **(BIR Ruling No. 071-2000 dated December 18, 2000)**

ESTATE TAX; Extension of time to pay - Granting the request on behalf of the heirs of the late Olivia Chiong Olaivar and Pedrito Timbal Olaivar for an extension of two (2) years within which to pay the corresponding estate tax due on the transmission by the said estate of its properties pursuant to Section 91(B) of the Tax Code of 1997 but the estate shall be liable for the corresponding interest that have accrued thereon up to the time of payment. **(BIR Ruling No. 072-2000 dated December 18, 2000)**

VAT; Exemption of owners of motorized tricycle with gross sales not exceeding P100,000.00 - Pursuant to Revenue Memorandum Circular No. 4-98 supplementing Revenue Regulations No. 7-95, the term "in the course of business" was further qualified in the light of the declared policy of the government to provide, as much as possible, an equitable relief to a greater number of taxpayers in order to improve levels of disposable income and increase economic activity. This Office held that "any business or businesses pursued by an individual where the aggregate gross sales or receipts do not exceed P100,000.00

during any 12-month period shall be considered principally or subsistence or livelihood and not in the course of business." Accordingly, the owners/operators/drivers of motorized tricycle for hire in Kalibo, Aklan are among those individual taxpayers qualified under the aforesaid definition, although still required to register, they shall nevertheless be exempted from the payment of registration fee as prescribed under Section 236(B) of the Tax Code of 1997, and from the payment of value-added tax and percentage taxes, in accordance with Revenue Memorandum Circular No. 4-98 dated January 21, 1998. (Citation omitted) (**BIR Ruling No. 073-2000 dated December 22, 2000**)

VAT; Sale to BOI-registered supplies; Implications - Section 3 of RMO No. 9-2000 provides that sales of goods, properties, or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95.

1. Since IPMI is a BOI-registered enterprise and at the same time a VAT-registered taxpayer as shown by its Certificate of Registration No. EP-97-319 duly issued by the Board of Investments as a 100% exporter and Certificate of Registration No. 000-125-079 duly issued by the Bureau of the Internal Revenue while its supplier, HPPC, is likewise a VAT-registered company with VAT Registration No. 003-956-294-000, in accordance with the aforementioned conditions of RMO 9-2000, the sale by HPPC of home PCs to IPMI shall be subject to zero-percent (0%) VAT pursuant to Section 3 of RMO No. 9-2000.

2. Section 3(1) (a) of RMC No. 74-99 provides that sales made by a VAT-registered supplier to a PEZA- registered enterprise shall be subject to zero-percent (0%) VAT pursuant to Section 106(A)(2)(a)(5) of the Tax Code of 1997 and Section 23 of RA No. 7916. The sale by HPPC of home PCs to ITPI, a PEZA-registered enterprise shall be subject to zero-percent (0%) VAT pursuant to Section 106(A)(2)(a)(5) of the Tax Code of 1997 as clarified in RMC No. 74-99. However, the VAT Registration of ITPI is considered as an erroneous registration, thus, ITPI is not entitled to input taxes on its purchases of home PCs from HPPC.

3. As represented, IPMI and ITPI shall grant home Personal Computers to the employees in consonance with the objective to develop, improve internet, e-business and PC skills and likewise to advance Intel products to the said employees and their families. Thus the grant of said benefits is necessary to the trade or business of IPMI and ITPI. However, since there is no clear showing on whether or not ownership to said personal computers shall be immediately transferred to the employees the following the tax implications:

(a) If ownership and possession is transferred to the employees, the grant to managerial and supervisory employees is subject to the fringe benefits tax (FBT) imposed under Section 33 of the Tax Code of 1997, as implemented by Revenue Regulations No. 3-98 while those granted a rank-and-file employees shall be subject to the tax imposed under Section 24(A)(1)(c) of the same Code and, consequently, to the withholding tax on compensation under Revenue Regulations No. 2-98, the valuation of which shall be the entire acquisition cost of the computers. In this case, the value of the benefits consisting of the acquisition cost of the computers shall be taken up under the Fringe Benefits expense account, not capitalized, and, therefore, not subject to depreciation.

(b) If ownership over said computers is retained by IPMI and ITPI and only the right of usufruct is transferred to the employees, it is our opinion that 50% of the monetary value of said benefit is subject to the FBT, if granted to the managerial and supervisory employees, or to the

withholding tax on compensation in the case of the rank-and-file employees, applying by analogy the rules on the FBT imposed on the grant of motor vehicles under Sec. 2.33(B)(3)(e) of Revenue Regulations No. 3-98.

While computers, and other office equipment, do not exactly belong to the category of motor vehicles, yet the application of the FBT rule on motor vehicles, which are not entirely used in business, in so far as company-owned equipment are concerned, is in order, for both are similarly situated. Corollary to this, generally accepted accounting principles dictate that the acquisition cost of the computers shall be capitalized and subjected to the periodic depreciation charges which are allowable as deductions for income tax purposes, together with the fringe benefits tax paid thereon. **(BIR Ruling No. 074-2000 dated December 22, 2000)**

ZONAL VALUATION - Section 6(E) of the Tax Code of 1997 empowers the BIR Commissioner to determine the fair market value of real properties in specific zones or areas upon consultation with competent appraisers. In the instant case, since the property located at Zabarte, Novaliches, Quezon City is covered by a special zonal value as recommended by the Sub-Technical Committee on Real Property Valuation and which was subsequently resolved by the Technical Committee on Real Property Valuation and approved by the then Commissioner of Internal Revenue on December 1, 1997, the same is in accordance with the said section of the Tax Code. Accordingly, SMILE Citihomes Housing Project located at Zabarte, Novaliches, Quezon City which are covered by CCTs shall not be covered by the Guidelines in the Implementation of Zonal Valuation of Real Properties for RD No. 28-Novaliches but to the special zonal value as recommended by the Technical Committee on Real Property Valuation and approved by the then Commissioner of Internal Revenue. **(BIR Ruling No. 075-2000 dated December 28, 2000)**